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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0636**

State of Minnesota,
Respondent,

vs.

Ryan Lloyd Pogatchnik,
Appellant.

**Filed February 20, 2018
Affirmed
Randall, Judge***

Kandiyohi County District Court
File No. 34-CR-16-523

Lori Swanson, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Shane Baker, Kandiyohi County Attorney, Willmar, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Jesson, Judge; and Randall, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

RANDALL, Judge

Appellant challenges his conviction for fifth-degree possession of a controlled substance, arguing that the circumstantial evidence was insufficient for a jury to convict. We affirm.

FACTS

On June 24, 2016, a state trooper pulled over a car for speeding. After identifying the driver as appellant Ryan Pogatchnik, the trooper detected a slight marijuana odor, and noticed Pogatchnik wearing a hat with an eight-ball logo, which, based on the trooper's experience, refers to "a common measurement" of methamphetamine. The trooper asked Pogatchnik to get out of the car and if any drug-related items were present, to which Pogatchnik responded "there shouldn't be." The trooper then questioned the passenger, N.Z., who gave the trooper a marijuana dugout.¹

The trooper searched the vehicle and found a bandana between Pogatchnik's seat and the center console. The bandana contained a clear plastic bag of a crystalline-like substance and a cylinder-shaped pipe. Both the pipe and the crystalline-like substance tested positive for methamphetamine.

After arresting Pogatchnik for possession of a controlled substance, Pogatchnik admitted to using methamphetamine two weeks prior, but stated that a friend had given him the bandana and pipe, and denied they were his. Pogatchnik also admitted that the car

¹ A marijuana dugout is a case containing spaces for a pipe and marijuana.

belonged to him, but added he shared it with another individual. Although Pogatchnik admitted his DNA might be on the bandana, he claimed that it was only because it was the same one he used when he smoked methamphetamine previously, and that his DNA “could” be on the methamphetamine bag because he used that same type of bag to store screws. Respondent State of Minnesota charged Pogatchnik with fifth-degree possession of a controlled substance.

At trial, Pogatchnik testified that his girlfriend used his car, but explicitly stated that he was not offering her as an alternative perpetrator and did not state when she had last used the car. He also admitted smoking methamphetamine two weeks prior to his arrest from a pipe wrapped in the same bandana entered into evidence, but denied that the pipe and bandana belonged to N.Z. The jury found Pogatchnik guilty as charged.

This appeal follows.

DECISION

To support a conviction of fifth-degree controlled-substance possession, the state must prove that Pogatchnik unlawfully possessed one or more mixtures containing methamphetamine. Minn. Stat. §§ 152.02 (Supp. 2015), .025, subd. 2(b)(1) (2014). The state must prove beyond a reasonable doubt that the defendant “consciously possessed . . . the substance and that [the] defendant had actual knowledge of the nature of the substance.” *State v. Florine*, 303 Minn. 103, 104, 226 N.W.2d 609, 610 (1975).

Pogatchnik argues that this court should overturn his conviction because the state provided insufficient evidence proving that he knew about the methamphetamine in his

car. The state responds that the evidence supports the reasonable inference that Pogatchnik possessed and controlled the methamphetamine found in his car.

In considering a claim of insufficient evidence, this court limits its review to a “painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to permit the jurors to reach [their] verdict.” *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We will not disturb the jury’s verdict if, acting with due regard for the presumption of innocence and proof beyond a reasonable doubt, they could reasonably find the defendant guilty. *Id.*

“While it warrants stricter scrutiny, circumstantial evidence is entitled to the same weight as direct evidence.” *State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999). In applying the circumstantial-evidence standard, we use a two-step analysis. *State v. Harris*, 895 N.W.2d 592, 600–01 (Minn. 2017). First, we “identify the circumstances proved ... deferr[ing] to the jury’s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved.” *State v. Silvernail*, 831 N.W.2d 594, 598–99 (Minn. 2013) (quotation omitted).

We identify the circumstances proved here as: (1) Pogatchnik owned his car when the trooper found methamphetamine in it; (2) “he wore a hat” with a methamphetamine reference;² (3) N.Z. gave the trooper a marijuana dugout when asked if he had any drugs; (4) Pogatchnik stated “there shouldn’t be” when asked if any drugs were in the car; (5) the trooper found a pipe and a baggie of methamphetamine in the car below Pogatchnik’s seat;

² Of marginal value as credible evidence, much like a hat stating “Vikings 2017 NFC Champions.”

(6) Pogatchnik admitted to smoking methamphetamine in a pipe with the same bandana found below his seat, the one he claimed his “friend” had given him; and (7) he admitted some of his DNA may be on the pipe, bandana, and methamphetamine bag.

Next, we consider if the above circumstances are consistent with Pogatchnik’s guilt and inconsistent with any rational hypothesis except guilt. *Id.* at 599. Here, the state proceeded on a theory of constructive possession. To prove constructive possession, the state must show that there is a strong probability, inferable from the evidence, that the defendant consciously exercised dominion and control over the controlled substance. *Florine*, 303 Minn. at 104-05, 226 N.W.2d at 610.

Pogatchnik did not have exclusive possession of his car, so we cannot “automatically infer from the mere fact that [methamphetamine] was found in [his car] that [it] belonged” to Pogatchnik. *Id.* at 105, 226 N.W.2d at 611. Consequently, the state must prove that Pogatchnik “exercised dominion and control over the contraband.” *State v. Sam*, 859 N.W.2d 825, 834 (Minn. App. 2015). “Proximity is an important consideration in assessing constructive possession.” *Id.* (quotation omitted).

In support of his argument that the state presented insufficient evidence tying him to the methamphetamine, Pogatchnik cites *Sam*, in which the circumstances proved included: the defendant borrowing another’s car, with another passenger present, and methamphetamine found in the glove compartment. *Id.* at 834. This court reversed the constructive-possession conviction, because merely driving a car containing contraband “is insufficient to eliminate all reasonable inferences inconsistent with appellant’s guilt.” *Id.*

But here, the evidence presents more than just Pogatchnik driving a car with contraband inside. First, the car belonged to Pogatchnik, so he had direct access to it, and he did not specify when his girlfriend last used it prior to his arrest. Second, he recognized the bandana found in his car and he admitted to smoking methamphetamine out of a pipe that was wrapped in the same bandana. Third, he stated that the methamphetamine bag, bandana, and pipe could contain his DNA. Finally, the trooper found the bandana, with methamphetamine and a pipe wrapped inside, in close proximity to Pogatchnik.

After scrutinizing the record for the circumstances proved at trial, it was reasonable for the jury to have inferred beyond a reasonable doubt that Pogatchnik constructively possessed the methamphetamine. We conclude the circumstances proved support Pogatchnik's conviction. *See Florine*, 303 Minn. at 105, 226 N.W.2d at 611 (affirming constructive-possession conviction where the evidence supported an inference that the defendant at one time had physical possession of the substance and was consciously exercising dominion and control over it when the police found it).

Pogatchnik argues that this court must reverse his conviction because the state failed to present sufficient evidence that he alone constructively possessed the methamphetamine. Pogatchnik argues, as a reasonable inference inconsistent with his guilt, that the methamphetamine belonged to N.Z. The state argues that even if N.Z. possessed the methamphetamine, a jury could infer that he and Pogatchnik jointly possessed it.

A reviewing court must "examine independently the reasonableness of all inferences that might be drawn from the circumstances proved." *Silvernail*, 831 N.W.2d at 599 (quotation omitted). A reviewing court "assume[s] that the jury disbelieved any

testimony in conflict with the result it reached.” *State v. Asfeld*, 662 N.W.2d 534, 546 (Minn. 2003) (quotation and emphasis omitted).

Here, Pogatchnik testified at trial that the pipe and bandana did not belong to him and could belong to N.Z. The state impeached Pogatchnik with two prior crimes of dishonesty. Deference is given by reviewing the court favoring the jury’s ability to evaluate the credibility of testimony. *See State v. Stein*, 776 N.W.2d 709, 717 (Minn. 2010) (stating that “although the defendant’s version of the events, if believed might give rise to different inferences, the jury was free to, and evidently did, reject defendant’s version of these events” (quotation omitted)).

The state provided sufficient circumstantial evidence for the jury, as factfinders, to convict Pogatchnik. We affirm Pogatchnik’s conviction of fifth-degree possession of a controlled substance.

Affirmed.